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DATE: January 18, 2007

TO: Senate Fish and Game Committee Members

FROM: John E. Bloomquist, on behalf of the Montana Stockgrowers Association (MSGa)

RE: SB 78 (Larson) as Introduced

Overall Objections

SB 78 would place into the Montana Stream Access Law (MSAL) an allowance for members of the public to access streams and rivers by using: 1) county bridges and the bridge's right-of-way, and 2) county road rights-of ways, as legal access points under the MSAL. The bill also proposes an elaborate process for landowners to connect fences to county bridges. MSGA opposes SB 78 for several reasons as set forth below.

1. SB 78 modifies key provisions of the MSAL agreed upon by landowner interests and access interests in 1985. SB 78 expands stream access in a manner at odds with the agreed upon limitations of the MSAL. MSGA has stood by its agreement in 1985 and has never challenged the law. In most instances, the MSAL has worked well to balance the public's right to recreate on streams and rivers with the landowner's property and privacy interests protected under the Montana Constitution. SB 78 affects the balance created under the MSAL.
2. SB 78 arguably results in a "taking" of private property without compensation in violation of the 5th and 14th Amendments of the United States Constitution, and in violation of the Article II, Sec. 29 of the Montana Constitution. In addition, because the bill implicates the fundamental property rights of landowners, the bill is also probably unconstitutional as introduced.
3. The bill is also apparently designed to determine the outcome of ongoing litigation. Prior to the last legislative session, a lawsuit was filed by Public Lands Access Association (PLAA) in Madison County concerning the issue of bridge access and fences attached to bridges. The Montana Stockgrowers Association and affected landowners have intervened in that action which is still pending before the 5th Judicial District Court.
4. The bill, if passed, will likely adversely effect landowner/sportsmen relations. The MSAL was a delicate compromise. In addition, landowners who have allowed the public to access streams and rivers at bridges could be unfairly penalized by the legislation. In fact, the bill will likely

create more conflicts, and perhaps, more litigation than other options available to the legislature.

Specific Provisions

1. New section—Section 1—

Page 1, Lines 23-26. The definition is not a test which can be met. A fence, in and of itself, makes access to a stream or river “more difficult.” In addition, the definition is so vague it essentially has no meaning.

2. New Section—Section 2—

(1) allows public access from a bridge, and the bridge’s right-of-way. In order to allow this, the bill modifies existing law under 7-14-2112 to state that bridge easements are sixty (60) feet. Present law exempts bridges from the sixty (60) foot width. This expansion occurs without due process or compensation. See also, 7-14-2107 on acquisition of rights of way for county roads. This expansion is also inapplicable to the law dealing with bridge easements created by prescription. See, below.

3. New Section—Section 2—

(2) allows public access from county road rights-of-ways. This occurs regardless of the origin of the county road (i.e. petitioned, dedicated, condemned, or by resolution). Under 7-14-2101(2) county roads are created by one of these ways. County roads may also arise by prescription, and not by official act of the county. In these instances, the right-of-way is limited to the travel way. Portmann, 149 Mont. 91 (1967). In other words, the 60 foot right-of-way under 7-14-2112(1) is only for roads created by official act, not for prescriptive roads or bridges created by use. Id. This section and the amendments to existing law in Section 4 expands the right of way for prescriptive roads without due process or compensation.

4. New Section—Section 2—

Both (1) and (2) refer to (5) dealing with prescription. New (5) states that access to streams and rivers from roads or bridges whose right-of-way is based on prescription, is dependant upon the use during the prescriptive period. This new (5) states or implies that recreational access to a river or stream may be created by prescription.

This provision is directly at odds with the MSAL. Under M.C.A. § 23-2-302(4) the right of the public to make recreational use of water does not grant any right to cross private property nor grant any easement to do so. Under M.C.A. § 23-2-322 (2)(b), a prescriptive easement is not allowed over private property to reach waters. It is important to remember the underlying land of a county road or bridge is subject only to a right-of-way interest. See, 7-14-2107(3). The land belongs in fee to the landowner. This is especially important on prescriptive roads / bridges.

As such (5) is at odds with 7-14-2107(3), 23-2-302(4), and 23-2-322 (2)(b). The MSAL prohibits prescriptive easements to get to waters. New (5) is not only at odds with this provision, but will create more questions and conflict between landowners, counties, and the recreating public.

Furthermore, under Montana Law, occasional recreational use is not sufficient to create an easement by prescription. See, Boone and Crockett, 259 Mont. 279. As such, new (5) also runs afoul of Montana Case Law. This too will only lead to further conflict and litigation.

5. New Section 2—

New (4) states the county may, in consultation with DFWP, condition access for public safety, but only to that extent. Under Montana Law counties have broad discretion relating to county roads. See, 7-14-2102. If a county believes it is in the best interest of county roads, or the traveling or recreating public to say no, they should be able to do so without DFWP and without a threat of litigation over whether a bridge or road is off limits for “public safety” reasons.

6. New Section 3—

This entire section requires a landowner to request authorization to attach a fence to a bridge. Presumably, there is an assumption that such authorization is required.

First, as to prescriptive roads / bridges, the right-of-way may not extend beyond the travel way. As such, the fence off the travel way is not an encroachment. Second, fences which contain livestock are necessary to protect the traveling public. If authorization is denied, what is the landowner to do? Place the fence across the stream?

In addition, (1)(b) states the fence may not [make it more difficult] to access a stream or river. Well, a fence will make access more difficult, which means a fence may not be authorized. Entire (1)(b) is unworkable.

(2)(a) allows county and DFWP to inspect and make this determination. If they determine the fence [makes it more difficult] to access the stream, the county or DFWP can alter the fence to their satisfaction. See, (2)(b). If the landowner fails to address their concerns, it may be removed. If it [makes it more difficult] the fence is considered an encroachment. However, See, 7-14-2130 (which would seem to be reasonably interpreted to allow fences adjacent to county roads).

(3)(a) puts all expense on the landowner. (3)(b) is unintelligible.

(3)(c) requires DFWP approval of the fence to be eligible for cost reimbursement.

(4)-(9) creates an enormous process which will be very cumbersome, is not necessary and only creates more problems. In fact, the conflict / review may be triggered by “any person.”

New Section 3 is simply unnecessary and creates a process which is cumbersome or will be largely ignored. In addition, conflict with a fence can be created for no real reason.

7. New Section 3—

New (10)(b) creates liability for a landowner. The liability stems from a landowner who places a fence (willful conduct) and a recreationist gets hurt or injured. In other words, now a landowner could be liable for injury to a recreationist who is getting to a stream or river, from a bridge or county road.

8. Section 4—

The expansion of the right-of-way in amending existing 7-14-2112 may constitute uncompensated takings and seems contrary to 7-14-2107.

Alternative Approach

DFWP already has a program for encouraging public access for recreational use of streams and rivers. See, 85-1-285. Funds under this program may be used to purchase or lease

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public fishing access at county road bridge crossings, and associated facilities at such sites (i.e. parking, trails, etc. See, 85-1-385(4)). This program is directly available to provide access in cooperation with landowners, and to assess impacts to the resources affected. MSGA believes this program should be utilized by DFWP rather than placing all the burden on a landowners' property.

Other Considerations

Access is not without impacts. Weeds, degradation of resources, impact to private property, and other problems can arise. SB 78 addresses none of these factors. Rather than forcing access at all bridges and county roads, MSGA believes DFWP's existing program should be the mechanism employed.

Conclusion

SB 78 greatly expands the MSAL, expands the scope and width of county road and bridge easements, and is likely unconstitutional in several aspects. MSGA urges the committee to vote "do not pass" on SB 78.

Thank you.

Part 1 Development of Outdoor Recreational Resources

23-2-101. Legislative findings — purpose. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this part to give authority to the department of fish, wildlife, and parks to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-401; amd. Sec. 2, Ch. 218, L. 1979.

23-2-102. Department of fish, wildlife, and parks to implement federal act. The department of fish, wildlife, and parks is hereby designated as the state agency to represent the state for the purpose of implementing the Land and Water Conservation Fund Act of 1965.

History: En. Sec. 2, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-402; amd. Sec. 2, Ch. 218, L. 1979.

23-2-103. Compliance with federal act authorized — powers of department. The department of fish, wildlife, and parks shall do those things necessary to comply with the provisions of the Land and Water Conservation Fund Act of 1965. Among other things, the department of fish, wildlife, and parks may:

- (1) prepare a comprehensive statewide outdoor recreational plan which shall contain an evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana and a program for implementation of the plan;
- (2) accept and administer moneys paid by the secretary of the interior for approved projects;
- (3) contract with other state agencies, cities, counties, and other political subdivisions of the state, private organizations, and agencies of the federal government;
- (4) acquire, other than by eminent domain, and develop outdoor recreational areas and facilities and land and waters and interests in land and waters for such areas and facilities;
- (5) for the purpose of implementing the Land and Water Conservation Fund Act of 1965, coordinate its activities with and represent the interests of all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-403; amd. Sec. 2, Ch. 218, L. 1979.

Part 2 reserved

Part 3 Recreational Use of Streams

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
 Smith River Management Act, Title 23, ch. 2, part 4.
 Owner of land bounded by water, 70-16-201.
 Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.
 Title by prescription, 70-19-405.
 Aquatic ecosystem protections, Title 75, ch. 7.
 Public ways, 85-1-111.
 Navigable waters, 85-1-112.
 Surface water and ground water, Title 85, ch. 2.
 Fish and Wildlife, Title 87.
 Navigable waters subject to fishing rights, 87-2-305.

23-2-301. Definitions. For purposes of this part, the following definitions apply:

- (1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.
- (2) "Class I waters" means surface waters, other than lakes, that:
 - (a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985; amd. Sec. 2, Ch. 28, L. 1991.

Cross-References

Recreational purposes defined, 70-16-301.

Flood plain and floodway management, Title 76, ch. 5.

23-2-302. Recreational use permitted — limitations — exceptions. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities which are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters which are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of such lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985.

Cross-References

Regulation of snowmobiles, Title 23, ch. 2, part 6.

Definition of enter or remain unlawfully, 45-6-201.

Migratory game birds hunting stamp, 87-2-411.

Hunting licenses, Title 87, ch. 2, part 5.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.

Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of his rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects

a structure which does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of his rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that such a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of such route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility thereafter to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), he may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in this part addresses the issue of natural barriers or portage around said barriers, and nothing contained in this part makes such portage lawful or unlawful.

History: En. Sec. 3, Ch. 556, L. 1985.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

Owner of land bounded by water, 70-16-201.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

23-2-312 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987.

Cross-References

Liability, Title 27, ch. 1, part 7.

Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters. (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; or

(b) the entering or crossing of private property to reach surface waters.

History: En. Sec. 5, Ch. 556, L. 1985.

Cross-References

Title by prescription, 70-19-405.

Part 4**Management of Smith River****Part Cross-References**

Water rights, Art. IX, sec. 3, Mont. Const.

Stream access, Title 23, ch. 2, part 3.

Gratuitous permittee for recreation, Title 70, ch. 16, part 3.

Aquatic ecosystem protections, Title 75, ch. 7.

Surface water and ground water, Title 85, ch. 2.

Stream protection, Title 87, ch. 5, part 5.

23-2-401. Short title. This part may be cited as the "Smith River Management Act".

History: En. Sec. 1, Ch. 512, L. 1989.

23-2-402. Purpose — intent. (1) The purpose of this part is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) Nothing in this part may be construed in any way to restrict a landowner's access to or use of his land, improvements, water rights, or adjacent waterways.

History: En. Sec. 2, Ch. 512, L. 1989.

23-2-403. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

History: En. Sec. 3, Ch. 512, L. 1989; amd. Sec. 2, Ch. 28, L. 1991.

23-2-404. Applicability. This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state fishing access site in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102.

History: En. Sec. 4, Ch. 512, L. 1989.

23-2-405 and 23-2-406 reserved.

23-2-407. Management responsibility and plan. The department has the primary recreational management responsibility for the Smith River waterway described in 23-2-404, consistent with the purpose stated in 23-1-101 and 23-2-402. The Smith River waterway must be administered to:

(1) allow the continuation of compatible existing recreational and public land uses;

(2) maintain the opportunity to enjoy the natural scenic beauty and solitude; and

- (a) a railroad;
- (b) taxes levied pursuant to 7-14-1632;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of the bonds, the authority may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

History: En. Sec. 16, Ch. 333, L. 1993.

7-14-1637. Debt service fund. An authority may create a debt service fund and accumulate in the fund a sum determined by the directors, together with the interest on the sum, for the use, repair, maintenance, and capital outlay expenses of a railroad.

History: En. Sec. 17, Ch. 333, L. 1993.

7-14-1638. Tax exemption. Property in this state acquired by an authority for railroad purposes pursuant to the provisions of this part and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 18, Ch. 333, L. 1993.

7-14-1639. Procedure to enlarge authority. (1) The directors of an authority may by resolution enlarge the boundaries of the authority in accordance with the procedures of notice and hearing in 7-14-1612.

(2) The property within an addition to the authority is subject to the existing indebtedness of the authority.

History: En. Sec. 19, Ch. 333, L. 1993.

Parts 17 through 20 reserved

Part 21 General Provisions Related to County Roads

Part Cross-References

Road improvement districts, Title 7, ch. 14, part 29.

7-14-2101. General powers of county relating to roads and bridges — definitions.

(1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

- (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills;

(b) "county road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners.

(3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

History: (1)En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 16-1004(part), 32-2203(4), (11); amd. Sec. 1, Ch. 320, L. 1999; amd. Sec. 1, Ch. 440, L. 1999; amd. Sec. 36, Ch. 584, L. 1999; amd. Sec. 10, Ch. 125, L. 2001.

Cross-References

Flood control projects, Title 76, ch. 5, part 11.

7-14-2102. General powers relating to county roads — assignment of responsibility. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. The board may assign responsibility for the supervision of county roads to a county surveyor or to a county road superintendent or may allocate the duties between the county surveyor and the county road superintendent.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(4); amd. Sec. 2, Ch. 336, L. 1995.

7-14-2103. Duties of county commissioners concerning county roads. (1) A board of county commissioners has general supervision over the county roads within the county.

(2) A board may survey, view, lay out, record, open, work, and maintain county roads that are established in accordance with this chapter. Guideposts must be erected.

(3) A board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part); amd. Sec. 1, Ch. 253, L. 1993; amd. Sec. 2, Ch. 440, L. 1999.

Cross-References

Petition procedure, Title 7, ch. 14, part 26.

7-14-2104. Repealed. Sec. 1, Ch. 211, L. 1979.

History: En. Sec. 1, Ch. 153, L. 1939; R.C.M. 1947, 17-609.

7-14-2105. Reports to department of transportation. (1) Each board of county commissioners shall make reports relating to roads under its supervision which are requested by the department of transportation.

(2) The board and the road supervisor of a county and all other officers who may have the care and supervision of the public highways and bridges shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: (1)En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; Sec. 32-2801, R.C.M. 1947; (2)En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974; Sec. 32-2815, R.C.M. 1947; R.C.M. 1947, 32-2801(5), 32-2815; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2106. Parking regulations in unincorporated places. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to establish by resolution parking regulations for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-14-2107. Acquisition of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

(2) Each board shall acquire rights-of-way for county roads and discontinue or abandon them only upon proper petition therefor.

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2), (3)En. Sec. 8-201, Ch. 197, L. 1965; Sec. 32-4001, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-4001.

Cross-References

Establishment, alteration, or abandonment of county roads, Title 7, ch. 14, part 26.

7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, a written instrument conveying the right-of-way and incidents to the right-of-way must be signed and acknowledged by the person making it. The instrument must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the judgment of the court must be made. The copy must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments must particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965; R.C.M. 1947, 32-4012; amd. Sec. 11, Ch. 125, L. 2001.

7-14-2109. Transfer to state of county responsibility for right-of-way. A board of county commissioners shall transfer its control over and responsibility for a county road when the department of transportation notifies it that:

(1) a federal or state highway has been established and definitely located over a county road;

(2) funds are available for immediate construction of the highway;

(3) the highway will be improved and maintained by the department.

History: En. Sec. 8-216, Ch. 197, L. 1965; amd. Sec. 149, Ch. 316, L. 1974; R.C.M. 1947, 32-4016; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2110. Preparation of plat books. Each board of county commissioners may in its discretion order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable platbooks. Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(1).

7-14-2111. Layout of roads. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965; R.C.M. 1947, 32-2809.

7-14-2112. Width of roads. (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966.

History: En. Sec. 5-108, Ch. 197, L. 1965; R.C.M. 1947, 32-2808.

7-14-2113. County authority to establish speed limits. A board of county commissioners may, by ordinance, establish a special speed limit in accordance with 61-8-310 on any county road.

History: En. Sec. 1, Ch. 614, L. 1985; amd. Sec. 1, Ch. 43, L. 1999.

7-14-2114 through 7-14-2120 reserved.

7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district.

(2) If the board does not divide the county into districts, the county itself shall constitute one road district.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).

7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve during the pleasure of the board. In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(2) Under the direction and control of the board, he shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of any person employed on any road;

(c) perform other duties which are prescribed by the board.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(2), (3).

7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, a board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation pursuant to Title 70, chapter 30, or lease.

(2) A board may also acquire road-building material by gift.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(1), (2); amd. Sec. 12, Ch. 125, L. 2001.

7-14-2124. Disposition of surplus crushed rock and gravel. (1) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county.

(2) The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(3).

7-14-2125. Inspection of roads and work on roads. (1) The board of county commissioners may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done

under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(1), (3).

7-14-2126. Compensation for making inspections. The person making the inspections authorized by 7-14-2125 shall receive a daily salary equal to the equivalent of a daily rate for the salary established in 7-4-2107(2) and actual expenses if the person does not receive other compensation for that day and is not on an annual salary. The claims must be audited and allowed in the same manner as other claims against the county.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(2); amd. Sec. 2, Ch. 264, L. 1985; amd. Sec. 6, Ch. 507, L. 2001.

7-14-2127. Temporary limitation or prohibition of traffic. (1) A board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part of a county road when it is necessary in order to preserve or repair the roads.

(2) A board of county commissioners may temporarily close a county road or bridge or any part of a county road for maintenance or repair if the board determines that the road or bridge is unsafe. This temporary closure is not considered abandonment. The board of county commissioners shall erect signs indicating that the road is closed.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(4); amd. Sec. 3, Ch. 440, L. 1999.

7-14-2128. Designation of emergency area near construction project. (1) A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

(2) Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs.

(3) The board shall remove the emergency designation within 30 days after the cessation of the increased traffic.

History: (1) En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R.C.M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974; Sec. 32-2816, R.C.M. 1947; (2), (3) En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R.C.M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974; Sec. 32-2817, R.C.M. 1947; R.C.M. 1947, 32-2816, 32-2817.

7-14-2129. Control of livestock in emergency area. (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.

(2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than \$10 or more than \$50 for each violation.

History: (1) En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R.C.M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974; Sec. 32-2818, R.C.M. 1947; (2) En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R.C.M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974; Sec. 32-2819, R.C.M. 1947; (3) En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R.C.M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974; Sec. 32-2820, R.C.M. 1947; R.C.M. 1947, 32-2818, 32-2819, 32-2820.

7-14-2130. Control of the movement of livestock on or near county roads. (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence across the right-of-way of the intersecting county road. The board shall construct a pass which

will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

(3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2)En. Sec. 5-110, Ch. 197, L. 1965; Sec. 32-2810, R.C.M. 1947; (3)En. Sec. 5-111, Ch. 197, L. 1965; Sec. 32-2811, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-2810, 32-2811.

Cross-References

Containment of livestock, Title 81, ch. 4.

7-14-2131. Reseeding of right-of-way. Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require the person or agency responsible for the disturbance to comply with 7-22-2152.

History: En. Sec. 5-113, Ch. 197, L. 1965; R.C.M. 1947, 32-2813; amd. Sec. 26, Ch. 607, L. 1985.

7-14-2132. Control of weeds along roads and highways. (1) The district weed board shall control noxious weeds on the county roads.

(2) If the department of transportation does not control noxious weeds on state and federal highways in any county, the district weed board shall control them. Upon presentation by the board of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974; R.C.M. 1947, 32-2814; amd. Sec. 27, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Noxious weed control, Title 80, ch. 7, part 7.

7-14-2133. Removal of obstructions on county roads. (1) When a county road becomes obstructed, the board of county commissioners, or the county surveyor if the surveyor is in charge, shall remove the obstruction upon being notified of the obstruction.

(2) This section does not hold the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(3) For the purposes of this section, "obstruction" means an obstacle, such as a rock or a fallen tree, that if not removed would remain in the road indefinitely. The word does not mean snow, ice, or any other obstacle that will melt or dissipate on its own accord.

History: En. Sec. 5-204, Ch. 197, L. 1965; R.C.M. 32-2904(part); amd. Sec. 1, Ch. 245, L. 2001.

7-14-2134. Removal of highway encroachment. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965; R.C.M. 1947, 32-4405.

Cross-References

Highway encroachments, Title 60, ch. 6.

7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at his place of residence if such person resides in the county; or

(b) by posting it on the encroachment if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4406.

7-14-2136. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately or removal is not diligently conducted, the one who

causes, owns, or controls the encroachment is liable to a penalty of \$10 for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4407.

7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the same as a nuisance.

(b) If he recovers judgment, he may have his costs and \$10 for every day such nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) He may recover the expense of removal, \$10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4408.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in parts 21 through 28 in the name of the state of Montana.

(2) All penalties, except those paid to a justice's court, shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4409; amd. Sec. 2, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by Justice's Court, 3-10-601.

7-14-2139. Procedure to make excavations across highway. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume, or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor, or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board.

(2) Any such bridge shall be maintained by the county.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(1), (2).

7-14-2140. Prevention of water flow over highway. Any person obtaining a construction permit or any person using the water of a ditch, dike, flume, or canal referred to in 7-14-2139 shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(3).

7-14-2141. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume, or canal or stores, distributes, or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, upon notification by the board of county commissioners, road supervisor, or county surveyor of the district where such overflow occurred, must repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning, or using such ditch or flume who permits an overflow is liable as provided in 45-8-111.

History: En. Sec. 11-104, Ch. 197, L. 1965; R.C.M. 1947, 32-4404.

Part 22

General Provisions

Related to Bridges

7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of transportation.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if he is in charge, shall repair the bridge upon being notified thereof.

(b) Nothing in this subsection shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county.

History: (1)En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974; Sec. 32-2901, R.C.M. 1947; (2)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; (3)En. Sec. 5-204, Ch. 197, L. 1965; Sec. 32-2904, R.C.M. 1947; R.C.M. 1947, 32-2901, 32-2904(part), 32-2905(1); (4)En. Sec. 1, Ch. 194, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2202. Construction and maintenance of bridges crossing county lines.

Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965; R.C.M. 1947, 32-2906.

7-14-2203. Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

History: En. Sec. 5-205, Ch. 197, L. 1965; R.C.M. 1947, 32-2905(2).

7-14-2204. Construction and maintenance of bridges in municipalities. (1) Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half, to be determined by the board, of the cost of planking, replanking, paving, or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: (1), (2)En. Sec. 5-202, Ch. 197, L. 1965; Sec. 32-2902, R.C.M. 1947; (3)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; R.C.M. 1947, 32-2902, 32-2905(3).

7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or town of any bridge, the cost of which exceeds \$10,000, the board of county commissioners shall submit to the qualified electors of the county at a general election or a special election held in conjunction with a regular or primary election the question of whether the bridge is to be constructed and paid for by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county in the amount authorized for the construction of the bridge. Bonds must be issued under the regulations that apply to other bonds of the county.

(b) The bridge must be constructed using the proceeds of the bond sale.

(3) Subject to 15-10-420, if the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503.

History: En. Sec. 5-203, Ch. 197, L. 1965; R.C.M. 1947, 32-2903; amd. Sec. 49, Ch. 387, L. 1995; amd. Sec. 37, Ch. 584, L. 1999.

7-14-2206. Use of bridges in municipalities by street railway. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth or more than one-half of the cost of construction of the bridge.

(2) During the time the bridge is used by the railway, the railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth or more than one-half) as is determined by the board.

History: En. Sec. 7-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3603.

(3) The department shall make every effort to expend or obligate funds for shooting range improvement grants within the year for which they are appropriated.

(4) The department shall prioritize grant applications according to those that provide facilities for the greatest number of shooters, that accommodate the use of a combination of hunting arms, and that meet other criteria established by the department.

(5) The department may not grant more than 30% of the eligible funds for the establishment or improvement of any single facility in any year.

(6) The department shall promote the use of publicly owned land for shooting range facilities. The department may negotiate with federal, state, and local agencies to encourage land trades, shared or specific use designations, and other mechanisms to provide land for shooting range facilities.

History: En. Sec. 4, Ch. 475, L. 1999.

87-1-280 through 87-1-282 reserved.

87-1-283. (Temporary) Bull trout and cutthroat trout enhancement program. (1) In order to enhance bull trout and cutthroat trout populations through habitat restoration, reductions in species competition, and natural reproduction, the department shall, through its future fisheries improvement program, restore habitats and spawning areas and reduce species competition in rivers, lakes, and streams for Montana's bull trout and cutthroat trout.

(2) In order to implement this section, the department may expend revenue from the bull trout and cutthroat trout enhancement program for one additional full-time employee and one contractor to assist the review panel.

(3) The department shall also work with the department of transportation to implement bull trout and cutthroat trout enhancement by providing annual updates to the state transportation improvement program regarding possible additions to projects that will benefit the enhancement effort. State transportation improvement plan funds expended for bull trout and cutthroat trout must be accounted for separately and reported annually. (*Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.*)

History: En. Sec. 1, Ch. 529, L. 1999.

87-1-284 reserved.

87-1-285. Fishing access enhancement program created — private landowner assistance to promote public fishing access — rules. (1) The department may establish programs of landowner assistance that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives for private landowners who allow public fishing access on or across their lands, where legal access does not presently exist. Participation in the fishing access enhancement program is established through a cooperative agreement between a landowner and the department, including other resource management agencies when appropriate, that allows access for public fishing with certain restrictions or use rules.

(2) The department may also develop similar voluntary programs that are designed to promote public access across private lands for fishing purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to private land that is enrolled in the program or who does not provide reasonable public fishing access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners.

(4) Funds from the account established pursuant to 87-1-605 may be used to purchase or lease public fishing access at county road bridge crossings or for necessary parking facilities, trails, or ramps to facilitate fishing access to public waters at bridge crossings.

History: En. Sec. 1, Ch. 196, L. 2001.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 48, L. 2005, repealed sec. 6, Ch. 196, L. 2001, which terminated this section March 1, 2006. Effective October 1, 2005.

87-1-286. Fishing access enhancement program — benefits for providing fishing access — cooperative agreement — factors for determining benefits earned —

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restriction on landowner liability. (1) As provided in 87-1-285, the department may establish and administer a voluntary program to enhance fishing access. The program must be designed to provide tangible benefits to participating private landowners who grant access to or across their land for public fishing.

(2) A contract for participation in the fishing access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public fishing, which may include leases, easements, or rights-of-way to rivers, streams, ponds, or lakes on the landowner's property and leases or easements for access along the banks or shorelines of rivers, streams, ponds, or lakes on the property. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

- (a) fishing access management, which may include off-road parking, foot trails, and vehicle access roads;
- (b) services to be provided to the public;
- (c) landowner property rules and other restrictions;
- (d) any other management information to be gathered, which must be made available to the public; and
- (e) notice to adjacent landowners.

(3) If the department determines that the plan referred to in subsection (2) may adversely influence fish management decisions or fishing habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding fish populations and habitat use must be considered in developing the plan.

(4) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public fishing access. Benefits will be provided to offset potential impacts associated with public fishing access, including but not limited to those associated with general property maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Program priority must be given to properties that provide the greatest fishing access for the lowest costs. Factors used in determining benefits may include but are not limited to:

- (a) the number of days of public fishing provided by a participating landowner;
- (b) fish habitat provided; and
- (c) access provided to adjacent public lands.

(5) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

- (a) A landowner may receive direct monetary compensation for providing fishing access.
- (b) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.
- (c) A landowner may direct fire protection payments to be made directly to the local fire district or the county where the landowner resides or may elect to receive payments directly.
- (d) A landowner may receive direct payment to offset insurance costs incurred for allowing public fishing access.

(e) The department may provide assistance in the construction and maintenance of roads, fencing, gates, and parking facilities and in the signing of property.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the fishing access enhancement program.

History: En. Sec. 2, Ch. 196, L. 2001.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 48, L. 2005, repealed sec. 6, Ch. 196, L. 2001, which terminated this section March 1, 2006. Effective October 1, 2005.

87-1-287. Placement of warning sign in water legally accessible to public — liability limitation — role of department. (1) Unless acting with gross negligence, an individual or a nonprofit organization is not liable for civil damages resulting from the

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